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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
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Policies and Rules	)	
Pertaining to the	)	RM-8012
Equal Access Obligations	)	
of Cellular Licensees	)	

COMMENTS OF AMERITECH, BELLSOUTH CORPORATION, NYNEX CORPORATION, PACIFIC TELESIS GROUP, AND U S WEST, INC.

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SUMMARY

Ameritech, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, and U S WEST, Inc. ("Regional Bell companies" or "RHCs") agree with MCI that it is both "appropriate and timely" for the Commission to initiate a comprehensive rulemaking proceeding to consider the propriety of equal access requirements for all cellular providers. MCI Petition at 1, 3. Indeed, the Regional Bell companies urge the Commission to expand the scope of the requested rulemaking to include other radio services, such as Personal Communication Services ("PCS") and Specialized Mobile Radio ("SMR"), in addition to cellular.

Currently, the Department of Justice interprets the Bell System divestiture decree to require the RHCs' cellular affiliates to provide equal access to their customers on all calls that cross LATA boundaries. The RHCs' competitors -- including McCaw and GTE, the two largest cellular providers -- are not required to provide equal access and do not do so. This disparity has created a competitive imbalance that is hurting consumers. In an affidavit accompanying these comments, Richard Higgins and James Miller, two distinguished economists, estimate that RHC cellular customers are paying as much as $200 million a year for the equal access requirements imposed on the Regional Bell companies.

The Regional Bell companies believe that the playing field must be leveled. To that extent, the RHCs fully support MCI's petition. But to level the playing field of equal access obligations does not require new or additional regulation. Equal access requirements are designed to prevent a party with

"bottleneck" power over a facility from exploiting that power to gain unfair advantages in adjacent markets dependent on that facility. Cellular, paging, and other radio services are provided in competitive markets, and the Commission has rightly concluded that competitive markets do not require "internal" equal access obligations to remain competitive. The Commission has consistently worked to ensure that competing radio carriers enjoy equal access to the local exchange. But at no time has the Commission extended equal access obligations to competitive radio exchanges.

The RHCs have filed a waiver request with the Department of Justice seeking removal of the equal access requirements of the decree as applied to cellular and other radio services. In that proceeding as well as this rulemaking, the Commission should reaffirm its longstanding position that the appropriate point for equal access regulation is at the interface between competitive and non-competitive markets -- not in the middle of competitive markets themselves. Furthermore, the FCC should declare its view that equal access obligations imposed selectively on RHC affiliates but not on others impedes effective competition, to the ultimate detriment of radio service customers.

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Ameritech, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, and U S WEST, Inc. ("Regional Bell companies" or "RHCs") file these comments on MCI's Petition for Rulemaking ("MCI Petition"). The Regional Bell companies agree with MCI that it is both "appropriate and timely" for the Commission to initiate a comprehensive rulemaking proceeding to consider the propriety of equal access requirements for all cellular providers. MCI Petition at 1, 3. Indeed, the Regional Bell companies urge the Commission to expand the scope of the requested rulemaking to include other radio services, such as Personal Communication Services ("PCS") and Specialized Mobile Radio ("SMR"), in addition to cellular.[1] The Commission should adopt uniform and consistent equal access policies for all radio-based services.

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[1]As AT&T's recent PCS filing demonstrates, other wireless technologies are developing rapidly and raise equal access issues similar to those posed by cellular services. Request for a Pioneer's Preference, Request of AT&T for a Pioneer's Preference Concerning Personal Communications Servs., Gen. Dkt. No. 90-314 (FCC May 4, 1992). AT&T's proposal makes no provision for equal access interconnection at the PCS switch, see Request for a Pioneer's Preference at Attachment 2 (May 4, 1992), and MCI has opposed it on that, and other, grounds. MCI Opposition at 10-11 (June 10, 1992).

Currently, the Department of Justice interprets the Bell System divestiture decree to require the RHCs' cellular affiliates to provide equal access to their customers on all calls that cross LATA boundaries. The RHCs' competitors -- including McCaw and GTE, the two largest cellular providers -- are not required to provide equal access and do not do so. This disparity has created a severe competitive imbalance. Accordingly, the RHCs have filed a waiver request with the Department of Justice seeking removal of the equal access requirements of the decree as applied to cellular and other radio services.

The Regional Bell companies believe that equal access requirements must be "equal" not only for customers but for carriers as well. To that extent, the RHCs fully support MCI's petition. But to level the playing field of equal access obligations does not require new or additional regulation. There is no need to impose "equal access" obligations down the middle of otherwise competitive markets, and the Commission has never done so before. The Commission should reaffirm, instead -- both in this proceeding and before the Department of Justice -- its well-established policy of allowing competing cellular and other radio carriers to compete freely.

I. THE FCC HAS CONSISTENTLY PROMOTED COMPETITION BETWEEN WIRELINE AND NON-WIRELINE RADIO CARRIERS

Equal access requirements are designed to prevent a party with "bottleneck" power over a facility from exploiting that power to gain unfair advantages in adjacent markets dependent on that

facility.[2] Equal access obligations on the local exchange were justified on the theory that local telephone service was a regulated, franchised monopoly. The Commission's equal access obligations on local carriers are imposed on both the line side of the local exchange (for such things as customer premises equipment)[3] and on the trunk side (to provide landline access for information service providers,[4] cellular carriers,[5] and long distance companies[6]).

By contrast, the FCC presently imposes no equal access requirements on cellular, paging, or other radio service providers. The reason for this is simple. These are competitive markets, and the Commission has rightly concluded that competitive markets do not require "internal" equal access obligations to remain competitive. The Commission has consistently worked to ensure that competing

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[2]In the context of this proceeding, "equal access" means that each cellular customer would be required to designate a presubscribed interexchange carrier ("PIC") to carry his or her long distance traffic. To implement equal access, each cellular carrier would have to grant "equal interconnection" to those interexchange carriers wishing to participate. This pleading refers to equal access and equal interconnection interchangeably.

[3]47 C.F.R. Part 68 (1991).

[4]See, e.g., Amendment of Sections 64.702 of the Commission's Rules & Regulations (Third Computer Inquiry), 104 F.C.C.2d 958, 964-965 (1986); modified on recon., 2 F.C.C.R. 3035 (1987), modified on further recon., 3 F.C.C.R. 1135 (1988).

[5]See, e.g., An Inquiry Into the Use of Bands 825-845 MHz & 870-890 MHz for Cellular Communications Sys., 86 F.C.C.2d 469, 495-496 (1981).

[6]See, e.g., MTS & WATS Market Structure Phase III, 100 F.C.C.2d 860 (1985).

radio carriers enjoy equal access to the local exchange.[7] But at no time has the Commission extended equal access obligations to radio exchanges themselves.

Instead, since its initial spectrum allocation for land radio services in 1949, the Commission has steadily implemented policies designed to foster full competition on equal terms among all players in the industry.[8] From the outset, the Commission allocated separate frequency blocks to wireline and non-wireline carriers.[9] Recently, the Commission has authorized a dispatch

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[7]See Amendment of Part 21 of the Commission's Rules with Respect to the 150.8-162 Mc/s Band to Allocate Presently Unassignable Spectrum to the Domestic Pub. Land Mobile Radio Serv. by Adjustment of Certain of the Band Edges, 12 F.C.C.2d 841, 846 (requiring equal interconnection to landline network for paging systems), recon. denied, 14 F.C.C.2d 269 (1968), aff'd sub nom. Radio Relay Corp. v. FCC, 409 F.2d 322 (2d Cir. 1969); 86 F.C.C.2d at 495-496 (requiring equal interconnection to landline network for cellular systems); The Need to Promote Competition & Efficient Use of Spectrum for Radio Common Carrier Servs., 2 F.C.C.R. 2910, 2914 (1987) (requiring telcos to provide "type 2" interconnection within six months of non-wireline carrier's request), recon., 4 F.C.C.R. 2369 (1989).

[8]See, e.g., An Inquiry Into the Use of Bands 825-845 MHz & 870-890 MHZ for Cellular Communications Sys., 89 F.C.C.2d 58, 81 (1982) ("we are attempting to foster" a "competitive environment . . . for cellular services"); 14 F.C.C.2d at 273 ("[w]e have made available to wireline and non-wireline carriers the same number of frequencies; we insulated the non-wireline carriers from unfair practices; we retained the power of the licensing function . . . [so that] each type of carrier is afforded an equal opportunity to compete"); 12 F.C.C.2d at 850 ("we are concerned with establishing and maintaining a fair and equitable climate within which the wireline and nonwireline carriers may compete").

[9]89 F.C.C.2d at 79 ("[a]s far back as 1949 this Commission has pursued separate wireline and non-wireline allocations for the purpose of stimulating competition between radio common carriers and wireline carriers"); In re ITT Mobile Tel., Inc., 1 Rad. Reg. 2d (P & F) 957, 963 (1963) ("the establishment of separate frequency blocks was designed to foster competition"); Amendment of the Commission's Rules to Allow the Selection from Among Mutually

company, Fleet Call, Inc., to provide "enhanced specialized mobile radio service" over its SMR channels, and has made clear that it will approve similar applications in the future.[10] The Commission has also announced its tentative decision to license from three to five systems for the provision of PCS in each cellular service area.[11]

In a 1968 paging proceeding, the Commission imposed its first explicit requirement that telcos supply miscellaneous common carriers with dial-up access interconnection to the landline network.[12] Specifically, telcos were required to offer non-wireline paging companies the same type of interconnection, at the same tariffs, and with access to the same discounts, as they offered to

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Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Competitive Hearings, 98 F.C.C.2d 175, 195-196 (1984) ("[t]he Commission originally adopted the separate allocation policy in 1949 in order to protect the fledgling common carrier industry from telephone companies").

When it began licensing cellular systems in 1981, the Commission expressly rejected proposals to license single systems in each service area because such a scheme would deny "the public the benefits of . . . competition in cellular service." 86 F.C.C.2d at 474-476, 478. Instead, the FCC chose to continue promoting competitive markets through its dual allocation scheme. Id. at 478; see also 98 F.C.C.2d at 196 ("[r]etention of the separate allocation policy . . . will be a stimulant to extending the healthy competition in existing mobile services to . . . cellular communications").

[10]In re Fleet Call, Inc., 68 Rad. Reg. 2d (P & F) 1301 (Mar. 14, 1991).

[11]Notice of Proposed Rulemaking, In re Pioneer Preference for Wireless Personal Comm. Sys., Dkt. Nos. 90-314, 92-100 (July 16, 1992).

[12]12 F.C.C.2d at 846.

their own radio service affiliates.[13] The Commission has similarly required equal access to the landline exchange for cellular carriers.[14] And while the FCC initially imposed structural separation requirements on wireline cellular carriers,[15] it removed those requirements for all wirelines except AT&T less than a year later.[16] The Commission noted that minimizing unequal treatment between wireline and non-wireline carriers was consistent with its policy of "stimulating competition."[17] Similarly, the FCC recently clarified its bundling rules to expressly allow all cellular carriers to package CPE and cellular service, in part to "maintain[]

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[13]12 F.C.C.2d at 849-850. The Commission also imposed other detailed requirements to ensure that "a balance [is] established so that the wireline company will not be in a position, because of its control over dial access interconnection, to claim or enjoy advantages not available to the [non-wirelines]." Id. at 850. The Second Circuit, in upholding the FCC's decision to allow wirelines to provide mobile services, described the FCC's conditions on the wirelines as "designed to . . . equalize the competitive situation." 409 F.2d at 327.

[14]86 F.C.C.2d at 496 (telcos must furnish "appropriate interconnection" for non-wirelines "upon terms no less favorable than those offered to the cellular systems of affiliated entities"); 89 F.C.C.2d at 81 ("every non-wireline cellular licensee has the right to interconnect with the landline network in the identical manner as the wireline cellular system with comparable switching serving the same area"; this requirement is meant to "insure that no unfair interconnection advantage is conferred on a wireline carrier").

[15]86 F.C.C.2d at 494.

[16]89 F.C.C.2d at 78-79. After divestiture, the FCC extended the separate subsidiary requirement to the RHCs. 95 F.C.C.2d 1117 (1983).

[17]89 F.C.C.2d at 79.

a level playing field and foster[] competition."[18] In rare instances where perfectly symmetrical treatment has not been possible or desirable, the FCC has taken steps to equalize competition and prevent one carrier from "secur[ing] [a] competitive advantage."[19]

II. THE EQUAL ACCESS POLICIES FOR RADIO SERVICES DEVELOPED UNDER THE MODIFICATION OF FINAL JUDGMENT ARE UNDERMINING THE FCC'S COMPETITIVE POLICIES

The Bell System divestiture decree imposed equal access obligations on the RHCs' local exchange telephone operations on the theory that the local exchange was a regulated monopoly that had to be quarantined from competitive markets dependent upon that "bottleneck." Because cellular services appeared to fall largely within the decree's definition of "local exchange" operations, the Department of Justice concluded that the decree's equal access requirements should be extended to cellular services on the same theory.

The result of this decision has been a misguided system of regulation for the RHCs that is diametrically at odds with the

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[18]Report & Order at 18-19, Bundling of Cellular Customer Premises Equipment & Cellular Serv., CC Dkt. No. 91-34 (FCC June 10, 1992).

[19]12 F.C.C.2d at 850-851 (paging services). For example, in response to potential asymmetrical competition between cellular carriers resulting from a wireline headstart, the Commission adopted resale and shared use regulations designed to allow non-wireline competitors to provide cellular service until their own facilities caught up. 86 F.C.C.2d at 491 n.57, 511 (if wireline headstart would be anticompetitive, FCC would consider imposing a "brief moratorium" on wireline cellular service); 98 F.C.C.2d at 184 (adoption of lottery system for awarding cellular licenses was intended to mitigate "any potential long-term adverse impact on competition resulting from one competitor's headstart").

FCC's regulation of all other radio service providers. The consent decree imposed no equal access restrictions or requirements for radio services at the level of the landline local exchange. But the RHCs were required to provide landline interexchange carriers with equal access at the level of the radio exchange (at the interface between the cellular switch and the LATA boundary). In other words, the decree placed bottleneck restrictions and safeguards on the wrong switch -- it imposed them on the radio switch, which is not a bottleneck, instead of on the landline switch, which was thought to be one.

Back in 1982, when LATA boundaries were initially considered, the FCC rightly argued that such boundaries have no relevance to radio services; indeed, cellular licensing areas had been shaped without regard to LATA boundaries.[20] The FCC therefore predicted, quite correctly, that superimposing LATA restrictions onto the FCC's SMSA-based licensing map would create numerous conflicts and impede the development of integrated cellular systems.[21]

In contrast to the geographically segmented approach of the divestiture decree, the FCC has always emphasized that "nationwide availability of [cellular] service" is "a primary goal."[22] In its earliest licensing proceedings, the Commission declined to impose any "bar to the number of SMSAs for which an applicant may seek a

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[20]FCC Reply at 2, United States v. Western Elec. Co., No. 82-0192 (D.D.C. Dec. 15, 1982).

[21]Id. at 4-6.

[22]86 F.C.C.2d at 502.

license"; it also allowed cellular licenses to be bought and sold freely and integrated with adjacent areas, so long as licensing provisions regarding the location and power of transmitters were respected.[23] The FCC was further willing to entertain applications to enlarge the service areas it had defined by combining two or more SMSAs.[24] In 1984, the Commission continued its effort to maximize "the freedom of applicants to design systems to meet market demand," and declined to establish "strict geographic limits" for non-metropolitan areas.[25] In 1988, the FCC again emphasized its desire to avoid "unnecessarily limit[ing] the ability of MSA licensees and RSA grantees to construct regional cellular systems made up of existing MSA systems and either all or a portion of planned RSA systems."[26]

The divestiture decree and FCC policies thus diverged from the beginning. Since then, decree requirements have been modified in a piecemeal fashion to conform to FCC policy. The decree court granted a series of specific geographic waivers, allowing one-way paging services free from equal access obligations at the level of

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[23] Id. at 87, 89.

[24] 89 F.C.C.2d at 87.

[25] 98 F.C.C.2d at 207. Such boundaries "would artificially restrict the ability of cellular applicants to identify local demand, growth potential and marketing receptivity and to design their systems accordingly." Id. at 207.

[26] Amendment of the Commission's Rules for Rural Cellular Serv., 4 F.C.C.R. 2440, 2444 (1988).

the radio switch,[27] and finally (six years after AT&T's original request), granted complete relief for wide-area paging services.[28] The Department of Justice now has before it the RHCs' request for generic relief from equal access obligations for cellular service.[29]

III. SIGNIFICANT ANTICOMPETITIVE EFFECTS HAVE RESULTED FROM THE IMPOSITION OF EQUAL ACCESS OBLIGATIONS ONLY ON THE RHC-AFFILIATED RADIO CARRIERS

Current decree restrictions have created a competitive imbalance that is hurting consumers. As MCI points out in its petition (at 3), while the RHCs, pursuant to the Department's interpretation of decree requirements, are presently providing equal access at the radio switch, no cellular carrier that is not required to do so -- i.e., "no non-RHC cellular licensee" -- voluntarily offers equal access. Non-RHC carriers provide

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[27]See, e.g., Order ¶ 4, United States v. Western Elec. Co., No. 82-0192 (D.D.C. June 20, 1986); Order at 3, United States v. Western Elec. Co., No. 82-0192 (D.D.C. May 14, 1986); Order at 3, United States v. Western Elec. Co., No. 82-0192 (D.D.C. Aug. 8, 1986); Order at 3, United States v. Western Elec. Co., No. 82-0192 (D.D.C. Sept. 22, 1987); Order at 1-2, United States v. Western Elec. Co., No. 82-0192 (D.D.C. June 16, 1988).

[28]Memorandum and Order, United States v. Western Elec. Co., No. 82-0192 (D.D.C. Feb. 16, 1989).

[29]See Motion of the Bell Companies for Removal of Mobile and Other Wireless Services From the Scope of the Interexchange Restriction and Equal Access Requirement of Section II of the Decree, United States v. Western Elec. Co., No. 82-0192 (DOJ Dec. 31, 1991). The decree court has granted a temporary waiver allowing the RHCs to provide intersystem handoff free from equal access obligations, but only because of technological limitations in providing the service via a customer's presubscribed interexchange carrier. United States v. Western Elec. Co., 1990-2 Trade Cas. (CCH) ¶ 69,177, at 64,455 (D.D.C. 1990); Memorandum, United States v. Western Elec. Co., No. 82-0192 (D.D.C. Sept. 6, 1991) (extending the waiver an additional year).

intersystem handoff and automatic call delivery; they cluster their service areas to make maximum efficient use of their switches and to provide extended "local" calling to their customers; and they buy interexchange service in bulk so that their customers avoid paying retail long distance rates. Absent waivers, the Regional Bell companies cannot do these things. Thus, non-RHC carriers competing with an RHC affiliate do not face competition in the provision of such services.

The losers from this regulatory schizophrenia (whereby the FCC encourages competition that the decree forbids) are consumers. In an affidavit accompanying these comments, Richard Higgins and James Miller, two distinguished economists, estimate that RHC cellular customers pay as much as $200 million a year for the decree restrictions that prevent the RHCs from buying long distance service in bulk and reselling that service to their customers. This $200 million is the difference between the bulk and retail price of interexchange service used by RHC cellular customers. And the figure does not include the loss to customers of many non-RHC providers which, because of the absence of competition, are able to mark up long distance prices and pocket the surplus.

Consumers, then, are the big losers from current decree restrictions on RHC cellular operations. Who are the winners? They are the long distance carriers and their trade associations. These carriers benefit directly from rules that force RHC cellular customers to pay retail long distance rates. Indeed, they benefit to the tune of some $200 million a year in excess profits from what

AT&T has euphemistically called the "market failure" created by the decree restrictions.[30]

Not surprisingly, in the proceedings currently pending before the Department of Justice, the long distance carriers have strongly opposed decree relief for the Regional Bell companies.[31] Their hypocrisy in this matter is clear. AT&T, which has unequivocally declared its intention "to become the market leader in wireless and personal communications services [PCS],"[32] makes no mention of equal access in the proposal it recently submitted to the FCC for a monopoly license on a nationwide PCS network. To the contrary: the network description AT&T has submitted to the Commission shows all the long distance traffic of AT&T's PCS customers piped directly into AT&T's own long distance network.

Sprint -- which told the Department that "[i]t makes absolutely no sense to eliminate the benefits of equal access for the majority of cellular customers because a few cellular providers do not have to provide equal access at the present time"[33] -- failed

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[30]AT&T Opposition at 55, 78, United States v. Western Elec. Co., No. 82-0192 (D.D.C. Apr. 27, 1992).

[31]Non-RHC cellular carriers also stand to gain somewhat from existing restrictions, but they tend to recognize that unhindered RHC participation in this industry -- to provide seamless service to customers -- is more important than a competitive advantage based on long distance traffic. Accordingly, they are more inclined to support, than oppose, relief. The interexchange carriers, by contrast, do not care about the health and growth of cellular service generally and thus do not hesitate to oppose relief that would benefit cellular customers at their expense.

[32]AT&T 1991 Annual Report: Strategies for Growth 5 (1992).

[33]Sprint Opposition at 12 United States v. Western Elec. Co., No. 82-0192 (D.D.C. Apr. 27, 1992).

to mention that Sprint itself is numbered among those "few cellular providers." Sprint owns cellular properties in some 30 areas, and does not provide equal access in any of them. Moreover, Sprint is in the process of taking over Centel Cellular, the third largest non-RHC cellular provider. Centel Cellular does not provide equal access either.

MCI itself is but a recent convert to the public benefits of equal access in the cellular industry. Between 1982 and 1986, MCI owned and operated various cellular properties. Those companies never offered equal access while under MCI's management. Only now that it is out of the cellular business, does MCI recognize (Pet. at 3) that the asymmetrical equal access requirements that exist today are at odds with the FCC's competitive policies and goals. But MCI wants to level the playing field down (so that all cellular carriers are subject to equal access), rather than leveling it up (so that none are).

Where the Regional Bell companies differ from MCI is in their belief that equal access requirements <u>at the level of the radio exchange</u> are unnecessary for any industry participants. While the Regional Bell companies willingly accept requirements that grant all cellular carriers equal access to the local exchange -- requirements that have long been a staple of the FCC's rules -- they vigorously dispute the suggestion that equal access requirements should be extended to the competitive radio exchange. The only result of such an extension would be to extend the harm

done currently to radio customers by the consent decree and to increase the windfall profits of interexchange carriers.

It is well-established in economic theory that if already competitive markets are to remain efficient, producers and consumers must remain free to package services with considerable flexibility. It would not be procompetitive to require that cars be sold unbundled, without batteries or tires; such a requirement would simply promote inefficiency and inconvenience. The same can be said of an equal access requirement that would prevent radio carriers from packaging long distance and other ancillary services with their radio services. There is simply no need for such a requirement at the level of the competitive radio exchange. As the attached affidavit of Higgins and Miller concludes, the "elimination of the equal access requirement would lead to a substantial lowering of long distance charges and substantial savings for consumers." Aff. at ¶ 78.

Beyond the fact that equal access regulations are affirmatively harmful to consumers in a competitive market such as cellular, they would also impose severe practical problems for the Commission. Regulation of equal access obligations at the landline switch has proven to be a complicated business, involving Commission oversight of both price and quality of access offered by exchange carriers. In an on-going effort to define exactly what level of equality is required by "equal access," the Commission has undertaken multiple investigations on matters such as call blocking frequencies, the sufficiency of access trunks, trunk selection

methods, and the transmission quality of access services. These problems would simply be compounded should the Commission seek to extend equal access to radio-based services.

For example, MCI fails even to describe the geographic areas in which "equal access" is to be provided. The LATA boundaries established by the decree are wholly unsuited for this purpose. As the Commission itself has stressed, cellular licensing areas were shaped without regard to LATA boundaries.[34] Over 60 waivers of those boundaries have been granted for radio services since divestiture and more than 20 are currently pending;[35] the Commission could expect a similar administrative nightmare if it incorporated the LATAs into an equal access regime for cellular service.

If the Commission were to adopt a regime based on MSAs and RSAs or some other geographic regions, there would be a discrepancy between the consent decree's LATA-based equal access requirements and those of the FCC. Regulatory confusion would increase and a competitive imbalance between RHC and non-RHC carriers would still exist. Moreover, whatever geographic dividing lines the FCC were to choose to distinguish "local" from "long distance" cellular service, a time-consuming and burdensome waiver process would still be necessary. Some intersystem services, such as handoff, simply

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[34]FCC Reply at 2 (Dec. 15, 1982). To take just one example, Texas RSA 8 has parts of five separate LATAs within its boundaries.

[35]Motion of the Bell Companies for Removal of Mobile and Other Wireless Services fromthe Scope of the Interexchange Restriction and Equal Access Requirement of Section II of the Decree at 47 (Dec. 13, 1991).

cannot be provided using equal access. And the Commission has made clear from the outset that it did not want to limit the scope of any carrier's integrated service area. Rather, the Commission has both expected and encouraged carriers to provide extended regional coverage by combining service areas.[36]

IV. THE FCC SHOULD ADDRESS THE ANTICOMPETITIVE EFFECTS CAUSED BY THE ASYMMETRICAL EQUAL ACCESS OBLIGATIONS IMPOSED ON RADIO SERVICE PROVIDERS

The present imbalance of the different equal access requirements imposed on RHC-affiliated and unaffiliated radio carriers is having serious anticompetitive effects. The FCC should take this opportunity to reaffirm its longstanding position that the appropriate point for equal access regulation is at the interface between competitive and non-competitive markets -- not in the middle of competitive markets themselves. Furthermore, the FCC should declare its view that equal access obligations imposed selectively on RHC affiliates but not on others impedes effective competition, to the ultimate detriment of radio service customers.

The Department of Justice is currently considering whether to recommend that the Regional Bell companies be relieved from the decree's equal access requirements for radio services. The Department's decision would undoubtedly be influenced by the knowledge that the Commission is conducting a comprehensive review of the issue in order to identify and implement an appropriate equal access policy for the entire industry. The Commission should actively encourage the harmonization of decree-based regulation

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[36]89 F.C.C.2d at 89.

with the FCC's established policy of permitting competitive markets to evolve in response to the dictates of competition and market demand.

CONCLUSION

The Commission has both the statutory mandate and institutional competence to evaluate and implement equal access policies for radio carriers. To that extent, the Regional Bell Companies therefore support MCI's request for a rulemaking proceeding to address equal access policies. The appropriate regulatory regime, however, and the one that the Commission should urge on the Department and the decree court as well, is one in which no equal access obligations are imposed within competitive markets themselves.

Respectfully submitted.

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Dated: August 3, 1992

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA Plaintiff, v. WESTERN ELECTRIC COMPANY, INC. and AMERICAN TELEPHONE and TELEGRAPH COMPANY Defendants.	Civ. Action No. 82-0192-HHG

TO: THE DEPARTMENT OF JUSTICE

AFFIDAVIT OF RICHARD S. HIGGINS
AND JAMES C. MILLER III

1. My name is Richard S. Higgins. I am Senior Vice President of Capital Economics, an economic consulting firm located in Washington D.C. that specializes in research in the areas of antitrust, regulation, international trade, and commercial disputes.

2. I received a Ph.D. in economics from the University of Virginia in 1969 and was a Post-Doctoral Fellow at the University of Chicago from 1975 to 1976. My training and research have been in the areas of industrial organization, antitrust, government regulation, and law and economics.

3. From 1969 to 1975 I was Assistant Professor of Economics at the University of Georgia, and from 1976 to 1981 I was Associate Professor of Economics at Auburn University. In 1981 I joined the U.S. Federal Trade Commission (FTC) as a staff economist in the Division of Consumer Protection of the Bureau of Economics. In 1982, I became a Deputy Director of the Bureau. In this capacity I supervised research involving government regulation, consumer protection, and antitrust matters. In the fall of 1987 I left the FTC to join Capital Economics.

4. My work at the Federal Trade Commission in the area of government regulation involved supervising research into the effects of governmental restraints at both the federal and state levels. These analyses were performed jointly by lawyers and economists, and included appraisals of regulations promulgated by the Federal Communications Commission (FCC).

5. My work at the FTC in the area of antitrust economics involved supervising economic analyses pursuant to Hart-Scott-Rodino investigations and other antitrust inquiries.

6. As Deputy Director of the Bureau, I reported to the Directors of the Bureaus of Economics, Competition, and Consumer Protection as well as to the Commission itself.